

domiciled in England and to reside at the premises of the London Copra Association and notices could be served on them at that address. They have not discharged the onus on them of showing that such notices were not properly issued in accordance with the Rules or that they were otherwise prejudiced in any way.

It follows that the application to set aside the registration of the judgment in question fails and it is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

PUBLIC PROSECUTOR v. JOHAR

[A.C.J. (Wee Chong Jin C.J.) November 11, 1964]

[Singapore — Magistrate's Appeal No. 36 of 1964]

Penal Code, ss. 44 and 385 — Extortion — Putting person in fear of injury — Meaning of "injury" — Whether exercise of legal powers can constitute injury.

The accused in this case was an acting superintendent of police in the Federation of Malaya. It was alleged that when he was in Singapore he demanded the sum of \$50,000 from one Lee Seng Chwee with the implied threat that one Lee Seng Kee, who was alleged to have entered into Malaya illegally, would be arrested if the money was not paid. The learned district judge acquitted the accused although he found that the prosecution had proved its case on the facts, as he felt bound to hold that under the law a threat to exercise a legal power of arrest did not constitute putting a person in fear of injury for the purposes of section 385 of the Penal Code. The Public Prosecutor appealed.

Held: the accused was not a person invested with any of the powers and duties of a police officer in Singapore and he had no legal powers to arrest any person in Singapore; and therefore assuming that the correct principle to be that, so far as extortion under the Penal Code is concerned, the exercise of legal powers however done can never constitute "injury" as defined in the Penal Code, the trial judge was wrong in holding that on the facts as found by him he was bound to acquit the respondent at the close of the case for the prosecution.

[Editorial Note: See "Legal Logic [1962] M.L.J. xxix.]

Cases referred to:—

(1) *Vincent Lee v. Rex* [1949] M.L.J. 296.

(2) *Abu Hassan v. Public Prosecutor* [1962] M.L.J. 61.

(3) *Loh Kwang Siang v. Public Prosecutor* [1960] M.L.J. 271.

MAGISTRATE'S CRIMINAL APPEAL.

Francis T. Seow (Ag. Solicitor-General) for the appellant.

Freddie Yin for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal by the Public Prosecutor against the decision of the

A First Criminal District Judge in acquitting the respondent at the close of the case for the prosecution. The charge against the respondent was as follows:—

B "You, Johar bin Abdul Rahman are charged that you on or about the 27th day of May, 1963, at 8.00 p.m. at the Ambassador Hotel, Meyer Road, Singapore, in order to the committing of extortion did put one Lee Seng Chwee in fear of a certain injury, to wit by threatening to arrest one Lee Seng Kee for having illegally entered into Malaya and that you have thereby committed an offence punishable under section 385 of the Penal Code (Chapter 119)."

C The facts are comparatively simple. Lee Seng Kee who had gone to China in 1948 had apparently returned to Malaya in 1962 illegally. On the 25th May 1963 the respondent, who was an Acting Superintendent of Police in the then Federation of Malaya, went to the house of one Lee Seng Chwee in Muar, Johore, where Lee Seng Kee was staying. There he intimated to D Lee Seng Kee and Lee Seng Chwee that he was a government officer and that he knew Lee Seng Kee had returned to Malaya illegally. When he was asked "What do you think", he replied "I am not giving you trouble now".

E This visit set in motion certain events which resulted in the respondent on the 27th May 1963 i.e. two days later meeting Lee Seng Chwee and two other persons in Singapore on the roof garden of the Ambassador Hotel. There the respondent asked from Lee Seng Chwee the sum of \$50,000 with the implied threat that Lee Seng F Kee would be arrested if the money was not paid.

The respondent was arrested in Johore on the 29th October 1963 on a Singapore warrant of arrest and was eventually charged in Singapore.

G At the close of the case for the prosecution the trial judge acquitted the respondent and recorded his reasons for so doing as follows:—

H "At this stage of the trial, on the question of fact, my finding is that the prosecution has succeeded in proving its case. However, on the question of law, I am unable to call on the accused for his defence in view of the two authorities cited to me, namely *Vincent Lee's* case⁽¹⁾ and *Abu Hassan's* case.⁽²⁾ These two decisions clearly lay down that the exercise of legal powers, however done, can never constitute harm within the meaning of section 44 of the Penal Code. I am satisfied that the accused has the power of arrest in this case but that power need not necessarily be exercised in Singapore. My view is under the law as it stands, a threat to exercise a legal power of arrest does not constitute putting a person in fear of injury. In the circumstances, on the question of law, I am not in a position to call on the accused for his defence, and accordingly he is acquitted and discharged."

I This appeal raises two questions: (1) the first question is whether the principle laid down by the two authorities referred to by the trial judge is correct. The learned Acting Solicitor-General says it is not. (2) The second question

is, assuming these two authorities have laid down the correct principle, whether on the facts of the present case it is applicable. The learned Acting Solicitor-General says it is not.

In *Vincent Lee v. Rex*, *supra*, the appellant, a volunteer special constable duly vested with all the powers and privileges of a police officer had threatened various persons who were smoking chandu with arrest. He was charged and convicted of the offence of extortion under section 384 of the Penal Code. Murray-Aynsley C.J. in allowing the appeal had this to say:

"The offence of extortion is defined in section 383 of the Penal Code. It will be seen that an essential part of the offence is putting a person in fear of 'injury'. In turn 'injury' is defined in section 44 of the same Code. There 'injury' is harm illegally caused. It appears to me to follow from this that the exercise of legal powers however done can never constitute harm."

In *Abu Hassan v. Public Prosecutor*, *supra*, the appellant was a customs officer who had threatened to report to higher authority someone, who had attempted to pass through a customs shed with money in excess of the amount that could be lawfully exported. It was conceded by the prosecution that the alleged threat was a threat by the appellant to exercise his legal powers. Hepworth J. on appeal held "that the exercise of legal powers, however done, can never constitute harm" and that therefore the essential element of "injury" as defined by section 44 of the Penal Code was not present on the facts.

On the other hand, in between these two cases, Rigby J. in *Loh Kwang Seang v. Public Prosecutor* ⁽⁸⁾ held on similar facts that it was a case of extortion. He says at page 273:—

"If A, (a police officer) knowing that B has committed an offence in respect of which it is A's duty to take action against him, threatens to take such action against him unless B pays him a sum of money and, in consideration of such money being paid by B, forbears to take such action, then A has committed the offences of both corruption and extortion. The offence is 'extortion' because the additional — and I emphasise the word 'additional' — element is present of putting B in fear of injury by the threat of bringing a criminal accusation against him."

There is therefore a conflict of judicial authority as to whether a person, invested with certain legal powers, can commit the offence of extortion under the Penal Code, where all the elements of extortion are present but the "injury" is caused when exercising his legal powers.

My opinion on the first question raised will not resolve the present uncertainty but would, if anything, add to it and as I have come to the clear conclusion that the Acting Solicitor-General's contention on the second question raised is correct, I accordingly do not propose to say anything on the first question except this. Whenever an appropriate opportunity presents

itself the provisions of section 66 of the Courts of Judicature Act 1964 should be invoked to obtain a binding decision on this point.

On the second question the respondent was on the 27th May 1963, although a police officer in the Federation of Malaya, not a police officer in the State of Singapore. Consequently he was not a person invested with any of the powers and duties of a police officer in Singapore. The threat was uttered by him in Singapore and moreover was uttered to someone other than the person accused of having committed a criminal offence. The facts and circumstances of the present case are therefore clearly different from those in *Vincent Lee's* case and *Abu Hassan's* case. The respondent on the day in question had no more legal powers in Singapore to exercise than any ordinary member of the public in Singapore.

It follows, in my opinion, assuming the correct principle to be that, so far as extortion under the Penal Code is concerned, the exercise of legal powers, however done, can never constitute "injury" as defined in section 44 of the Penal Code, the trial judge was wrong in holding that on the facts as found by him he was bound by binding authority to acquit the respondent at the close of the case for the prosecution.

The appeal is accordingly allowed and the order of acquittal set aside and the case is remitted to the trial court with a direction that the respondent should be called on for his defence.

Appeal allowed; acquittal set aside; case remitted to trial court.

Solicitor: *L. Rayner.*

CARTWITH LTD. v. J. E. LLOYD & ORS.

[O.C.J. (Chua J.) November 13, 1964]

[Singapore — Suit No. 973 of 1964]

Practice and procedure — Affidavit — Irregularity of affidavit — Application for leave to issue concurrent writ of summons and serve it out of the jurisdiction — R.S.C. 1934 O. XI rr. 1 & 4 and O. XXXVI r. 3(1).

This was an application to set aside an order giving leave to issue a concurrent writ and to serve it out of the jurisdiction.

In an *ex parte* application for leave to issue the said writ an affidavit was filed in which the deponent, a solicitor's clerk, made *inter alia* the following statements: (a) "I am advised and believe that the 4th, 5th and 6th defendants who are out of the jurisdiction of this Honourable Court are necessary and proper parties to the action brought against the 1st, 2nd and 3rd defendants who are within the jurisdiction of this Honourable Court"; (b) "I am also advised and believe that the plaintiff has a good cause of action against all the defendants".

An order was made granting the application.